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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ELAINE CROXTON-NARAIN, Plaintiff and Appellant, v. STERLING & STERLING, INC, Defendant and Respondent.	B285240 (Los Angeles County Super. Ct. No. BC610005)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

The Rubin Law Corporation, Steven M. Rubin and Paymon Mondegari for Plaintiff and Appellant.

Mound Cotton Wollan & Greengrass, Jonathan Gross and Lawrence Hecimovich for Defendant and Respondent.

INTRODUCTION

Appellant Elaine Croxton-Narain (Croxton)[1] sued her former employer, respondent Sterling & Sterling, Inc., (Sterling) for damages based on alleged violations of the Fair Employment and Housing Act (FEHA; (Gov. Code, § 12900 et seq.) and wrongful termination.[2] The trial court granted respondent's motion for summary judgment. Appellant contends triable issues of material fact precluded summary judgment in respondent's favor. Having independently reviewed the record, we agree summary judgment was appropriate. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[3]

I. Croxton's Employment, Medical Issues and Termination

Sterling is an insurance brokerage firm with a four-person office in Los Angeles. In September 2013, Croxton began working

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[1] Appellant refers to herself as "'Croxton"' in her briefs; we will do the same.

[2] Several Sterling entities were named as defendants; the parties stipulated Sterling was appellant's employer. Appellant also sued two individual defendants; they are not involved in this appeal.

[3] Appellant supported many of the facts in her briefs with citations to her own separate statement in opposition to respondent's summary judgment motion, rather than the supporting evidence itself. As the Court of Appeal has recognized, "'[g]eneral citation to the statements of undisputed material facts is inadequate"' and slows appellate review. (*State of California ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc.* (2011) 197 Cal.App.4th 963, 968, fn. 1.)

in the office as an associate account executive. She was responsible for customer service and provided administrative support for the other three office employees. Croxton's work–responding to clients' emails; processing insurance certificates, endorsements, and invoices; and other tasks–was performed almost exclusively on a computer.

Beginning in June 2015, Croxton experienced blurred vision and temporary vision loss. On numerous occasions from June 2015 to February 2016, Croxton visited Encino Urgent Care, where she was usually examined by Dr. Clarence Warner.[4] For most of the visits, Dr. Warner's diagnoses were based on Croxton's subjective complaints. As Dr. Warner would later testify in his deposition, because appellant never completed a neurological evaluation, he never determined the cause of her subjective or objective symptoms.

On June 11, 2015, Dr. Warner signed a form stating he diagnosed appellant with migraine headaches and a transient ischemic attack (TIA) and she was unable to work until June 17, 2015. On June 23, 2015, appellant saw Dr. Warner again. Dr. Warner signed a letter stating appellant still suffered from migraine headaches and blurred vision and should not return to work until July 7, 2015.

Dr. Warner examined appellant on July 1, 2015. Based on Croxton's description of her symptoms, Dr. Warner concluded she had a history of TIA's, with the most recent episode occurring June 30, 2015. Several days later, Dr. Warner again advised in

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[4] Appellant declared Dr. Warner was her primary care physician, but Dr. Warner testified in his deposition that he was an urgent care doctor and did not function as a primary care physician for his patients.

writing that appellant suffered from migraine headaches and blurred vision. He extended her medical leave to July 21, 2015.

On July 13, 2015, appellant saw Dr. Barbara Yates, a neuro-ophthalmologist, regarding her complaints of blurred vision and seeing shadows. Dr. Yates performed vision tests, but found the results inconclusive. The physician suggested appellant see a glaucoma specialist and obtain an MRI and blood test and then return for a follow-up visit; appellant never returned to Dr. Yates's office.

On July 24, 2015, appellant saw Dr. Lydia Matkovich, a glaucoma specialist, who ruled out glaucoma.[5] Dr. Matkovich, apparently not aware of appellant's visit to Dr. Yates, recommended that appellant see a neuro-ophthalmologist regarding her complaints and consider psychiatric treatment. Dr. Matkovich signed a form stating appellant could return to work, but should take frequent eye-rest breaks.

On July 25, 2015, another Encino Urgent Care physician signed a form stating appellant could not work from July 25 to 29, 2015, and that upon return she should rest her eyes frequently, citing Dr. Matkovich's note. Dr. Warner subsequently reviewed Dr. Matkovich's restrictions and authorized appellant to return to work on July 31, 2015.

Sterling accommodated Dr. Matkovich's restrictions. Appellant took rest breaks as needed, sitting at her desk with her eyes closed.

On August 4, 2015, appellant experienced a loss of vision in both eyes for several seconds. She visited Dr. Warner, who noted

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[5] Croxton declared she saw Dr. Matkovich on July 14, 2015, although the medical records indicate that the visit occurred on July 24, 2015. The precise date is immaterial.

two symptoms: decreased peripheral vision and a slight drooping on the left side of Croxton's face. Dr. Warner signed an Employment Development Department (EDD) form for disability insurance benefits, certifying appellant was currently unable to perform her regular job. Dr. Warner anticipated appellant could return to work on August 30, 2015. Despite Dr. Warner's certification of her disability, appellant returned to work.

On August 6, 2015, Jody Smith, a Sterling vice-president, shouted at appellant regarding her work performance. Appellant complained to human resources, but was not satisfied with the response. Work was stressful for appellant, and she felt anxious. She experienced another medical emergency that day and returned to Encino Urgent Care, where she saw Dr. Hwang. Croxton felt very dizzy, it seemed like her "'heart was going to explode'" and she was "'going to die;'" she was very anxious.

Croxton returned to work the next day. On her own accord, she worked a full day, plus five additional hours.

On August 11, 2015, Croxton visited Dr. Warner again for a follow-up visit. Dr. Warner observed a drooping right upper eyelid, and Croxton complained of occasional tingling of the scalp. Based on these symptoms and appellant's description of her health status, Dr. Warner believed her condition was worsening.

Croxton reported to Dr. Warner that she suffered another TIA on August 24, 2015. Dr. Warner signed a form to that effect. He authorized her to be off work until August 31, 2015.

On August 27, 2015, Sterling hired a temporary employee to perform Croxton's job duties.

Croxton returned to Dr. Warner on September 1, 2015. She asked the physician to excuse her from work for 30 days. Dr. Warner signed a letter stating Croxton had a history of

recurrent TIA's, was experiencing migraines and blurred vision, and should not return to work until October 1, 2015. Dr. Warner intended to reevaluate her at the end of that period. Croxton sent the letter to her employer, who received it on September 2, 2015.

On September 3, 2015, Dianne Haines, Sterling's senior vice-president, decided to terminate Croxton's employment. Haines believed the disability leaves would continue to be extended and never end. On September 4, 2015, Sterling offered the temporary employee a regular, at-will position as an associate account executive.

On September 16, 2015, after consulting with counsel, Sterling sent Croxton a letter terminating her employment. The letter stated Croxton's repeated and extended absences had created an undue hardship for the office: "'Given the nature of your job responsibilities and the necessity of your job functions, it is difficult for our office to successfully operate in your absence.'" The letter noted Sterling attempted to adjust to Croxton's absences in various ways, but could not find someone willing to fill her position on a temporary, as-needed basis.

II. Subsequent Events

During appellant's September 29, 2015 examination, Dr. Warner observed drooping and decreased sensation on the right side of Croxton's face. On that date, Dr. Warner signed another EDD form, this one certifying Croxton was unable to perform her regular work and remained disabled through November 30, 2015. His conclusion "'was based on previous symptoms, as well as . . . the frequency of the visits, the symptoms that were being

presented, you know, and if I thought the work-up was, in my opinion, incomplete.'"

Dr. Warner also provided a return-to-work note stating that Croxton could work no more than five hours per day at a computer and must take frequent breaks. Dr. Warner formed the opinion that Croxton was not able to work during this period, even with accommodations: "'[A]s far as I [was] concerned, the neuropsych evaluation was not complete. I had never seen a, you know, report as to what was the cause of her symptoms.'"

Croxton testified she never submitted the EDD form to the state to receive disability insurance benefits. Instead, on November 14, 2015, she asked Dr. Warner to sign a letter stating she was actually able to work as of October 1, 2015, with restrictions. She provided this letter to the EDD in order to receive unemployment insurance benefits; she received those benefits from October 2015 to November 2016.

Croxton was hospitalized from December 27 to 30, 2015. She saw Dr. Warner for the last time on February 9, 2016, and later treated with another physician.

III. Croxton's Complaint

Croxton initiated this lawsuit on February 10, 2016, alleging six causes of action based on FEHA violations: disability discrimination, hostile work environment harassment, failure to accommodate a physical disability, failure to engage in an interactive process, failure to prevent discrimination and retaliation, and retaliation. She also included causes of action for wrongful termination in violation of public policy and declaratory relief.

The parties stipulated for purposes of this lawsuit that respondent would not assert the defense of undue hardship as defined in Government Code section 12926, subdivision (u).[6]

IV. Sterling's Summary Judgment/Summary Adjudication of Issues Motion

Sterling contended there were no material fact issues to be resolved and it was entitled to judgment as a matter of law. Sterling's motion for summary judgment/ summary adjudication of issues raised a host of issues. Addressing the discrimination claims, Sterling argued Croxton failed to engage in a good faith interactive dialogue and instead engaged in a pattern of deception in an effort to hold her job open; was not a qualified person with a disability because she was unable to perform her essential job functions even with reasonable accommodations; was not entitled to an indefinite leave and could not show a reasonable likelihood that she would have returned to work within a reasonable period of time. Sterling also asserted Croxton's termination was based on a legitimate business need to timely respond to client requests and was not a pretext to discriminate or retaliate against her based on a physical disability; criticisms of Croxton's work performance began before she was disabled and were not based on her disability; criticisms occurring after her disability did not constitute adverse employment actions; and there was no evidence of severe and

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[6] Government Code section 12926, subdivision (u) defines ""undue hardship"" as "'an action requiring significant difficulty or expense, when considered in light of [certain enumerated] factors.'"

pervasive conduct creating a hostile working environment so as to constitute actionable harassment.

Croxton submitted declarations and other evidence in opposition to Sterling's motion. Both sides filed written evidentiary objections.

The trial court granted respondent's motion for summary judgment. Citing the parties' failure to comply with rule 3.1354(c) of the California Rules of Court, the trial court declined to rule on the parties' evidentiary objections.

In its written order, the trial court agreed Sterling's evidence demonstrated Croxton was unable to perform her essential job duties with or without reasonable accommodations. Croxton's essential job duties required her to work on a computer, and the undisputed medical evidence showed she was restricted to no more than five hours per day of that type of work. Croxton's only contradicting evidence was her subjective belief that she could work longer than five hours at a computer, but that evidence was irrelevant and could not establish a triable issue of material fact. The trial court found Croxton was not a qualified individual under FEHA and could not, as a matter of law, establish liability for disability discrimination, failure to accommodate a disability, failure to engage in the interactive process, or failure to prevent discrimination and retaliation.

The trial court concluded the failure to prevent discrimination, wrongful termination, and declaratory relief causes of action all depended on the disability claims and similarly failed as a matter of law. As for the harassment cause of action, the purported instances of unfair criticism of Croxton's work performance occurring before her disability leave could not have been motivated by a disability. The conduct occurring after

her disability leave involved ordinary personnel management actions that neither amounted to actionable harassment, nor were causally connected to her disability. The trial court held the retaliation cause of action failed because appellant's request for a reasonable accommodation was made before January 1, 2016, and pre-2017 requests could not support a retaliation claim. (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 247.) The trial court noted the absence of evidence that appellant's complaints to human resources involved a FEHA violation or protected activity.

V. The Judgment and Appeal

The trial court entered judgment in respondent's favor and denied appellant's motion for new trial. Croxton timely appealed.

CONTENTIONS

Croxton contends reversal is compelled because triable issues of material fact exist as to whether (1) she was a qualified employee pursuant to FEHA, i.e., could she perform the essential job duties with a reasonable accommodation for her physical disability;[7] (2) the shifting explanations of the reason for her

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[7] Appellant advises in her opening brief that this contention relates to the causes of action for discriminatory discharge, failure to provide reasonable accommodations, failure to engage in an interactive process, and failure to prevent discrimination or retaliation. Appellant does not set forth any discrete arguments concerning the interactive process, reasonable accommodation, or the wrongful termination cause of action. She forfeits any claims of error on these potential issues. (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 180, fn. 4; [failure to address particular causes of action on appeal from a summary

discharge were a pretext to discriminate against her; (3) mistreatment at work after she returned in August from her first leave constituted harassment; and (4) mistreatment after her complaint to human resources constituted retaliation.

DISCUSSION

I. Standard of Review

A defendant is entitled to judgment as a matter of law if there are no triable issues of material fact. (Code Civ. Proc., § 437c, subd. (c); *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 415.) A defendant moving for summary judgment has the initial burden to present evidence that the litigation lacks merit because the plaintiff cannot establish an element of every cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (o).) If the defendant satisfies this burden, the burden shifts to the plaintiff to present admissible evidence creating a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p); *Rondon v. Hennessy Industries, Inc.* (2016) 247 Cal.App.4th 1367, 1373-1374.)

We review the trial court's ruling de novo, liberally construing the evidence in favor of the party who opposed summary judgment and resolving all evidentiary doubts in her favor. (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.)

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judgment]; *Castillo v. DHL Express (USA)* (2015) 243 Cal.App.4th 1186, 1195 [failure to provide reasoned argument and cite legal authority].)

II. FEHA Overview

FEHA provides that employees may bring "'separate causes of action for a range of ""unlawful employment practices."""" (*Lui v. City and County of San Francisco* (2012) 211 Cal.App.4th 962, 970.) As so authorized, appellant's complaint included causes of action under FEHA for disability discrimination, failure to accommodate, failure to engage in the good faith interactive process to determine a reasonable accommodation, retaliation, harassment, and failure to prevent discrimination or retaliation. An extensive body of law has developed for each type of unlawful employment practice.

III. The Discrimination Claims Fail as a Matter of Law

A. Governing Principles

Government Code section 12940, subdivision (a) prohibits employers from discriminating against employees based on enumerated factors, including an employee's physical disability. This statutory prohibition, however, excludes from FEHA protection "'those persons who are not qualified, even with reasonable accommodation, to perform essential job duties.'" (*Green v. State of California* (2007) 42 Cal.4th 254, 262 (*Green*).) For this reason, an employee with a physical disability who is "'unable to perform the [job's] essential duties, even with reasonable accommodations, or [who] cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations,'" is not protected by FEHA. (Gov. Code, § 12940, subd. (a)(2).) The discharged employee has the burden to demonstrate she was able to perform the job's essential

functions with a reasonable accommodation. (*Green*, *supra*, at p. 262.)

An employer with knowledge of an employee's physical disability has a separate statutory duty to engage in a timely, good faith interactive process to determine whether a reasonable accommodation would enable the employee to perform the essential functions of the job. (Gov. Code, § 12940, subd. (n).) To be entitled to proceed with a lawsuit based on an employer's "'failure to engage in the interactive process, an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred.'" (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018.) The employee need not identify all possible accommodations while still employed; but once litigation has ensued, "'the employee must be able to identify an available accommodation the interactive process should have produced.'" (*Ibid.*)

In addition, FEHA imposes certain affirmative obligations on employers for the benefit of disabled employees. An employer must "'take all reasonable steps necessary to prevent discrimination and harassment from occurring.'" (Gov. Code, § 12940, subd. (k).)

B. Analysis

When deposed, Croxton testified her essential duties required the use of a computer. She agreed the noncomputer aspects of her daily responsibilities were insignificant:
"'Q: How much time did you spend on a computer when you were working at Sterling?
"'A: Around 8:00 to 4:30, I think. About 8:00 to 5:00.

"'Q: So basically your entire day you are working on the computer?
"'A: I was by the computer, yes.
"'Q: I'm sorry?
"'A: I was by the computer.
"'Q: Okay. And your job, essentially, was a matter of processing emails?
"'A: No.
"'Q: Okay. What was your job?
"'A: I—I process endorsement, certificates, invoices. Close any gap that could have been when—to comply with the company regulations or what needed to be in the system.
"'Q: And was all that done on the computer?
"'A: Yes.
"'Q: Did you have any significant responsibilities each day that did not involve using the computer?
"'A: No.'"

Nevertheless, in opposition to respondent's summary judgment motion, appellant submitted a declaration attesting to the fact that she was able to perform the essential job duties with a reasonable accommodation, i.e., frequent rest breaks for her eyes. Her declaration averred she "'had a variety of job duties, including, but not limited solely to, attending meetings, speaking with clients over the phone, sometimes answering phone calls, performing off-computer administrative duties, and reviewing printed out insurance policies.'" She also cited Smith's deposition testimony that "'there was a wide range of different things she was hired to do.'"[8] According to appellant, the range of duties,

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[8] Smith testified further, "'Specifically, it was to kind of support the activities of the office as respects our clients. And

together with lunch and rest breaks, reduced her total time using a computer to fewer than five hours per day, so she was able to perform her essential job duties while complying with her doctor's restriction of spending no more than five hours per day at the computer.[9]

Croxton's declaration does not quantify the time spent each day or week on the noncomputer duties and does not purport to elevate those tasks to a significant portion of her work responsibilities. The declaration is insufficient to raise a triable issue of material fact in the face of her unequivocal deposition testimony that the essential functions of her job required her to use a computer. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22; *Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087.) We do not liberally construe a declaration in a manner that contradicts a statement made by a party in a deposition. (*D'Amico*, at p. 21.) Instead, we must regard the clear statements in Croxton's deposition as established facts and disregard conflicting suggestions in her later declaration. (*Id*. at p. 22.)

Moreover, as of September 16, 2015, the date of her discharge, Croxton was not medically cleared to return to work

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those duties typically had to do around invoicing, essentially, maintaining our insurance agency client database. [¶] And that's a detailed database that dealt with invoicing, keeping track of policies, endorsements, a wide range of different tasks, issuing certificates, a whole bunch of different things associated with normal stuff associated with servicing a client.'"

[9] Appellant makes this argument despite conceding respondent was not advised of a five-hour restriction before discharging her.

under any circumstances or with any accommodations. Efforts to demonstrate the existence of a triable issue of fact as to whether a physician approved her return to work effective October 1, 2015, are not relevant to a termination that occurred two weeks earlier.[10] Appellant presented no evidence that she could perform the essential job duties, with or without reasonable accommodations, on the date she was discharged.

Appellant also contends respondent's shifting explanations of the reason for her discharge support an inference of pretext. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 360-361; *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 863.) But before pretext becomes an issue, the discharged employee must first demonstrate she was a qualified individual, i.e., an employee who is able to perform the essential job duties with a reasonable accommodation. (Gov. Code, § 12940, subd. (a)(1).) Without this evidence, an employee is not protected by FEHA and any suggestion of pretext or discrimination is irrelevant.

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[10] Those efforts also conflict with Dr. Warner's September 29, 2015 certification to the EDD that appellant remained totally disabled and unable to work until November 30, 2015. Dr. Warner signed the EDD form on the line above the advisement that a false certification of a patient's medical condition, with an intent to defraud, constitutes a felony. Dr. Warner's signature on the subsequent November 14, 2015 letter was not made under similar circumstances. Appellant's explanation for the apparent inconsistency was not sufficient to defeat summary judgment. (*Cleveland v. Policy Mgmt. Sys. Corp.* (1999) 526 U.S. 795, 796.)

IV. The Retaliation Claim Fails as a Matter of Law

A. Governing Principles

FEHA also makes it unlawful to retaliate against an employee who opposes practices prohibited under FEHA. (Gov. Code, § 12940, subd. (h).) To establish a prima facie case of retaliation under FEHA, a plaintiff must show (1) she engaged in an activity protected under FEHA; (2) the employer subjected the employee to an adverse employment action; and (3) there was a causal link between the protected activity and the adverse employment action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 (*Yanowitz*); *McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 298.)

B. Analysis

Respondent's motion attacked appellant's ability to establish two of the three elements of a retaliation claim−that appellant engaged in a FEHA-protected activity and there was a causal link between that activity and respondent's decision to discharge her. (*Yanowitz, supra,* 36 Cal.4th at p. 1042.) Appellant's evidence concerning the retaliation cause of action was as follows: In the morning on August 6, 2015, Smith sent Croxton an urgent request to issue an insurance certificate. He sent a reminder email approximately two hours later. Sometime after lunch, when the task still was not completed, Smith telephoned Croxton and berated her for overlooking the requests. Croxton completed the certificate after 3:00 p.m. Smith and Haines then exchanged emails discussing the incident without including Croxton in the dialogue.

On August 7, 2015, Croxton complained to human resources about the incident. She testified in her deposition that she told human resources "'that I felt that my colleagues were retaliating, and I was felt—I felt that because of my disability they were upset or they were not cooperating with me doing my job.'" Also on that date, her superiors instituted "'priority lists'" that eliminated her ability to access company email from her cell phone and excluded her from at least one email.

Croxton argues the sequence of events supports an inference of retaliation sufficient to defeat summary judgment. She also cites her own subjective belief that the priority lists were retaliatory. Liberally construing appellant's evidence, we nonetheless conclude they fail to raise a triable issue of material fact as to whether respondent retaliated against her for engaging in a FEHA-protected activity. (*Yanowitz, supra,* 36 Cal.4th at p. 1042.)

V. The Harassment Claim Fails as a Matter of Law

A. Governing Principles

Government Code section 12940, subdivision (j)(1) prohibits harassment of an employee based on the employee's physical disability or other protected status. Harassment implicates "'the *social environment* of the workplace,'" e.g. "'interpersonal relations,'" and manifests itself as intolerable "'verbal, physical, or visual'" communications to an employee. (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706, 707.)

A plaintiff pursuing a FEHA harassment claim based on a hostile work environment must prove (1) she was subjected to harassing conduct because of her physical disability or other protected status and (2) the harassing conduct was sufficiently

severe or pervasive to alter the conditions of employment and create a hostile or abusive work environment. (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283 (*Lyle*); *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1524.)

"""""[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances [including] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."""""" (*Lyle*, *supra*, 38 Cal.4th at p. 283.) Conduct that is merely annoying or offensive is not actionable if it is not "'severe or pervasive enough to create an objectively hostile or abusive work environment.'" (*Ibid.*; accord, *Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1377.)

The severity of harassment is viewed objectively from the perspective of a reasonable person in the plaintiff's position. (*Lyle*, *supra*, 38 Cal.4th at p. 283.) Regarding pervasiveness, "'courts have held an employee generally cannot recover for harassment that is occasional, isolated, sporadic, or trivial; rather, the employee must show a concerted pattern of harassment of a repeated, routine, or a generalized nature. [Citations.] That is, when the harassing conduct is not severe in the extreme, more than a few isolated incidents must have occurred to prove a claim based on working conditions. . . . [¶] To be actionable, "a[n] . . . objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so."'" (*Id.* at pp. 283-284.)

B. Analysis

Croxton contends the mistreatment she was subjected to after returning from the first disability leave raises a triable issue of material fact that supports her claim for workplace harassment in violation of FEHA. She relied on the same facts discussed above concerning the retaliation cause of action: Smith shouted at her in a meeting on August 3, 2015, and entered her office to take pictures of her inhaler. Several days later, Smith criticized her for failing to promptly respond to an urgent email. On August 7, 2015, after Croxton complained to human resources of harassment and discrimination, Haines began giving appellant daily "'priority lists'" and eliminated her cell phone access to company email.

From an objective viewpoint, these instances of alleged harassing conduct were situational and not so severe or pervasive as to create a hostile or abusive work environment. (*Lyle*, *supra*, 38 Cal.4th at p. 283.) Respondent was entitled to judgment as a matter of law on the harassment claim.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

We concur:

WILLHITE, Acting P. J.

COLLINS, J.

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* Retired judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.